

BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS

INITIAL STATEMENT OF REASONS

Hearing Date: October 2, 2012

Subject Matter of Proposed Regulations:

Section(s) Affected: Amend Title 16, Division 25, of the California Code of Regulations as follows:

Vocational Nurse (VN): Amend sections 2520.5, 2523.2

Psychiatric Technician (PT): Amend sections 2577.6, 2579.4

Introduction

The Board of Vocational Nursing and Psychiatric Technicians (Board) is mandated to protect consumers from licensees who practice in an unsafe, incompetent, or impaired manner. In accordance with Business and professions Code (Code) sections 2841.1 (VN) and 4501.1 (PT), protection of the public shall be the Board's highest priority in exercising its licensing, regulatory, and disciplinary functions.

Specific Purpose of each adoption, amendment, or repeal:

1. Problem being addressed:

The Board must amend its regulations in order to implement the revised employer mandatory reporting requirements established by SB 539.

SB 539 (Price, chapter 338, Statutes of 2011) amended Sections 2878.1 (VN) and 4521.2 of the Code by expanding the reporting requirements of employers of licensed vocational nurses (LVNs) and psychiatric technicians (PTs) to include "resignation for cause" under any of the circumstances listed in subdivision (d) of the respective code sections. The statutes were also amended to extend all reporting requirements to employment agencies and nursing registries, by including them within the definition of "employer" and by requiring employment agencies and nursing registries to report when a licensee is rejected from assignment at a health facility or home health care due to the acts that would be cause for suspension or termination as listed in subdivision (d).

Pursuant to subdivision (d) of Code Sections 2878.1 and 4521.2, the acts that would trigger the mandatory employer reporting requirement, if they result in a suspension, termination, resignation, or rejection from assignment, are as follows:

- (1) Use of controlled substances or alcohol to the extent that it impairs the licensee's ability to safely practice as a LVN or PT.
- (2) Unlawful sale of a controlled substance or other prescription items.
- (3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.
- (4) Falsification of medical records.
- (5) Gross negligence or incompetence.
- (6) Theft from patients or clients, other employees, or the employer.

2. Anticipated benefits from this regulatory action:

Consumer protection will be enhanced by extending existing reporting requirements to employment agencies and nursing registries.

Amend Sections 2520.5 (VN) and 2577.6 (PT)

The proposed regulatory amendments revise existing regulations to require employers to report LVN and PT resignations for cause; require employment agencies and nursing registries to report LVNs and PTs who are rejected from assignment due to acts that would be cause for suspension or termination; defines "employer" to include employment agencies and nursing registries; and includes "resignation for cause" and "rejection from assignment" among the acts that must be reported directly to the Board.

Amend Sections 2523.2 (VN) and 2579.4 (PT)

The proposed regulatory amendments revise citation violation and fine classification language to include the expanded reporting requirements pertaining to employers and other minor edits needed for clean up. Specifically, the proposed amendments add language stating that employers who fail to report to the Board a LVN or PT "rejection from assignment" or "resignation for cause" will be subject to a Class "A" violation wherein the associated fine shall not exceed \$10,000.

Factual Basis/Rationale

The Board must amend its regulations in order to implement the revised employer mandatory reporting requirements established by SB 539.

Underlying Data

Technical, theoretical or empirical studies, reports, or documents relied upon (if any):
None.

Business Impact

This regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts or evidence/documents/testimony:

This regulation extends reporting requirements to employment agencies and nursing registries. Many such employers already report this information to the Board voluntarily. The regulation will make clear to all employers of LVNs and PTs the necessity of reporting licensees' who may present a threat to the health, safety or welfare of the citizens of California.

Economic Impact Assessment

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because it relates only to reporting requirements imposed on employers of LVNs and PTs.
- It will not create new business or eliminate existing businesses within the State of California because it relates only to reporting requirements imposed on employers of LVNs and PTs.
- It will not affect the expansion of businesses currently doing business within the State of California because it relates only to reporting requirements imposed on employers of LVNs and PTs.
- This regulatory proposal benefits the health and welfare of California residents because it enhances consumer protection by requiring employers of LVNs and PTs to report licensees who are suspended or terminated for cause, resign for cause or are rejected from an assignment for cause.
- This regulatory proposal does not affect worker safety because it relates only to reporting requirements imposed on employers of LVNs and PTs.
- This regulatory proposal does not affect the state's environment because it relates only to reporting requirements imposed on employers of LVNs and PTs.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

1. Not adopt the regulations. This alternative was rejected because the regulatory proposal is based on statutory requirements.
2. Adopt the regulations. The Board determined that this alternative is the most feasible because the regulatory proposal will enhance consumer protection.